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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL ZELNY, an individual,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

CV 17-7357 JCS

**DEFENDANT ATTORNEY GENERAL
XAVIER BECERRA'S ANSWER TO
PLAINTIFF MICHAEL ZELNY'S
FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Judge: The Honorable Richard G.
Seeborg

Action Filed: December 28, 2017
First Amended Complaint filed

Xavier Becerra, in his official capacity as Attorney General of the State of California, hereby responds to Plaintiff Michael Zeleny's First Amended Complaint for Declaratory and Injunctive Relief as follows:

INTRODUCTION

1. In response to the allegations contained in paragraph 1 of the First Amended Complaint, Defendant Becerra denies the allegations.

2. In response to the allegations contained in paragraph 2 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

3. In response to the allegations contained in paragraph 3 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

4. In response to the allegations contained in paragraph 4 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

5. In response to the allegations contained in paragraph 5 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

6. In response to the allegations contained in paragraph 6 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

7. In response to the allegations contained in paragraph 7 of the First Amended Complaint, Defendant Becerra admits that Plaintiff Zeleny has asserted claims under 42 U.S.C. § 1983. Defendant Becerra denies that the California statutes Plaintiff Zeleny alleges were invoked or applied against him are unconstitutional. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

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8. In response to the allegations contained in paragraph 8 of the First Amended Complaint, Defendant Becerra denies that Plaintiff Zeleny challenges the facial validity of California statutes restricting the public display of unloaded firearms, specifically California Penal Code sections 26400 and 26350. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

JURISDICTION AND VENUE

9. In response to the allegations contained in paragraph 9 of the First Amended Complaint, Defendant Becerra admits the content of the First, Second, and Fourteenth Amendments to the United States Constitution and the federal Civil Rights Act, 42 U.S.C. §§ 1983 and 1988. Defendant Becerra denies that Plaintiff Zeleny is entitled to any relief under the First, Second, and Fourteenth Amendments to the United States Constitution or the federal Civil Rights Act, 42 U.S.C. §§ 1983 and 1988.

10. In response to the allegations contained in paragraph 10 of the First Amended Complaint, Defendant Becerra admits the content of 28 U.S.C. §§ 1331 and 1343.

11. In response to the allegations contained in paragraph 11 of the First Amended Complaint, Defendant Becerra admits the content of 28 U.S.C. §§ 2201 and 2202. Defendant Becerra denies Plaintiff Zeleny is entitled to the requested declaratory judgment.

12. In response to the allegations contained in paragraph 12 of the First Amended Complaint, Defendant Becerra admits the content of 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure. Defendant Becerra denies Plaintiff Zeleny is entitled to the requested injunctive relief.

13. In response to the allegations contained in paragraph 13 of the First Amended Complaint, Defendant Becerra admits the content of 42 U.S.C. § 1988. Defendant Becerra denies Plaintiff Zeleny is entitled to an award of attorney's fees and/or costs.

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14. In response to the allegations contained in paragraph 14 of the First Amended Complaint, Defendant Becerra admits the content of 28 U.S.C. § 1367(a) and California Code of Civil Procedure section 1021.5. Defendant Becerra denies Plaintiff Zeleny is entitled to an award of attorney's fees and/or costs.

15. In response to the allegations contained in paragraph 15 of the First Amended Complaint, Defendant Becerra denies committing any unlawful acts. Indeed, the Complaint lacks any allegations demonstrating any unlawful acts by Defendant Becerra. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

16. In response to the allegations contained in paragraph 16 of the First Amended Complaint, Defendant Becerra admits the content of 28 U.S.C. § 1391(b). Defendant Becerra denies engaging in any acts which would give rise to Plaintiff Zeleny's action. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

THE PARTIES

17. In response to the allegations contained in paragraph 17 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

18. In response to the allegations contained in paragraph 18 of the First Amended Complaint, Defendant Becerra admits he is the Attorney General of the State of California. Defendant Becerra admits that he is a resident of California, and a citizen of the United States.

19. In response to the allegations contained in paragraph 19 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

20. In response to the allegations contained in paragraph 20 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

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21. In response to the allegations contained in paragraph 21 of the First Amended Complaint, Defendant Becerra denies the unlawful acts and omissions alleged in the Complaint, but admits that he acted lawfully under color of state law. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

22. In response to the allegations contained in paragraph 22 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

23. In response to the allegations contained in paragraph 23 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

FACTS

24. In response to the allegations contained in paragraph 24 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

25. In response to the allegations contained in paragraph 25 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

26. In response to the allegations contained in paragraph 26 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

27. In response to the allegations contained in paragraph 27 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

28. In response to the allegations contained in paragraph 28 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

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1 29. In response to the allegations contained in paragraph 29 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 30. In response to the allegations contained in paragraph 30 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 31. In response to the allegations contained in paragraph 31 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 32. In response to the allegations contained in paragraph 32 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 33. In response to the allegations contained in paragraph 33 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 34. In response to the allegations contained in paragraph 34 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 35. In response to the allegations contained in paragraph 35 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 36. In response to the allegations contained in paragraph 36 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 37. In response to the allegations contained in paragraph 37 of the First Amended
26 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations and, therefore, denies the allegations therein.

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1 38. In response to the allegations contained in paragraph 38 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 39. In response to the allegations contained in paragraph 39 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 40. In response to the allegations contained in paragraph 40 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 41. In response to the allegations contained in paragraph 41 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 42. In response to the allegations contained in paragraph 42 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 43. In response to the allegations contained in paragraph 43 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 44. In response to the allegations contained in paragraph 44 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 45. In response to the allegations contained in paragraph 45 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 46. In response to the allegations contained in paragraph 46 of the First Amended
26 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations and, therefore, denies the allegations therein.

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1 47. In response to the allegations contained in paragraph 47 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 48. In response to the allegations contained in paragraph 48 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 49. In response to the allegations contained in paragraph 49 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 50. In response to the allegations contained in paragraph 50 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 51. In response to the allegations contained in paragraph 51 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 52. In response to the allegations contained in paragraph 52 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 53. In response to the allegations contained in paragraph 53 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 54. In response to the allegations contained in paragraph 54 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 55. In response to the allegations contained in paragraph 55 of the First Amended
26 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations and, therefore, denies the allegations therein.

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1 56. In response to the allegations contained in paragraph 56 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 57. In response to the allegations contained in paragraph 57 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 58. In response to the allegations contained in paragraph 58 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 59. In response to the allegations contained in paragraph 59 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 60. In response to the allegations contained in paragraph 60 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 61. In response to the allegations contained in paragraph 61 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 62. In response to the allegations contained in paragraph 62 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 63. In response to the allegations contained in paragraph 63 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 64. In response to the allegations contained in paragraph 64 of the First Amended
26 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations and, therefore, denies the allegations therein.

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1 65. In response to the allegations contained in paragraph 65 of the First Amended
2 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
3 conclusions, which do not require admission or denial. To the extent admission or denial is
4 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations and, therefore, denies the allegations therein.

6 66. In response to the allegations contained in paragraph 66 of the First Amended
7 Complaint, Defendant Becerra admits the content of California Penal Code section 26350. The
8 remainder of the paragraph consists of legal argument and/or conclusions, which do not require
9 admission or denial.

10 67. In response to the allegations contained in paragraph 67 of the First Amended
11 Complaint, Defendant Becerra admits the content of California Penal Code section 26375. The
12 remainder of the paragraph consists of legal argument and/or conclusions, which do not require
13 admission or denial.

14 68. In response to the allegations contained in paragraph 68 of the First Amended
15 Complaint, Defendant Becerra admits the content of California Penal Code section 26400. The
16 remainder of the paragraph consists of legal argument and/or conclusions, which do not require
17 admission or denial.

18 69. In response to the allegations contained in paragraph 69 of the First Amended
19 Complaint, Defendant Becerra admits the content of California Penal Code section 26405,
20 subdivision (r). The remainder of the paragraph consists of legal argument and/or conclusions,
21 which do not require admission or denial.

22 70. In response to the allegations contained in paragraph 70 of the First Amended
23 Complaint, Defendant Becerra admits the content of California Penal Code section 25510. The
24 remainder of the paragraph consists of legal argument and/or conclusions, which do not require
25 admission or denial.

26 71. In response to the allegations contained in paragraph 71 of the First Amended
27 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations and, therefore, denies the allegations therein.

1 72. In response to the allegations contained in paragraph 72 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 73. In response to the allegations contained in paragraph 73 of the First Amended
5 Complaint, Defendant Becerra admits the content of the First and Second Amendments to the
6 U.S. Constitution. The remainder of the paragraph consists of legal argument and/or conclusions,
7 which do not require admission or denial. To the extent that any of the allegations contained in
8 paragraph 73 require admission or denial, Defendant Becerra lacks knowledge or information
9 sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations
10 therein.

11 74. In response to the allegations contained in paragraph 74 of the First Amended
12 Complaint, Defendant Becerra admits the First Amendment to the United States Constitution
13 protects verbal and non-verbal forms of speech. As to the remaining allegations, Defendant
14 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations and, therefore, denies the allegations therein.

16 75. In response to the allegations contained in paragraph 75 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 76. In response to the allegations contained in paragraph 76 of the First Amended
20 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
21 conclusions, which do not require admission or denial. To the extent admission or denial is
22 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations and, therefore, denies the allegations therein.

24 77. In response to the allegations contained in paragraph 77 of the First Amended
25 Complaint, Defendant Becerra admits the content of the First and Second Amendment to the
26 United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the
27 United States Constitution. The remainder of the paragraph consists of legal argument and/or
28 conclusions, which do not require admission or denial.

1 78. In response to the allegations contained in paragraph 78 of the First Amended
2 Complaint, Defendant Becerra denies suppressing or threatening to suppress Plaintiff Zeleny's
3 lawful exercise of his Constitutional rights. As to the remaining allegations, Defendant Becerra
4 lacks knowledge or information sufficient to form a belief as to the truth of the allegations and,
5 therefore, denies the allegations therein.

6 79. In response to the allegations contained in paragraph 79 of the First Amended
7 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations and, therefore, denies the allegations therein.

9 80. In response to the allegations contained in paragraph 80 of the First Amended
10 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations and, therefore, denies the allegations therein.

12 81. In response to the allegations contained in paragraph 81 of the First Amended
13 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations and, therefore, denies the allegations therein.

15 82. In response to the allegations contained in paragraph 82 of the First Amended
16 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations and, therefore, denies the allegations therein.

18 83. In response to the allegations contained in paragraph 83 of the First Amended
19 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations and, therefore, denies the allegations therein.

21 84. In response to the allegations contained in paragraph 84 of the First Amended
22 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
23 truth of the allegations and, therefore, denies the allegations therein.

24 85. In response to the allegations contained in paragraph 85 of the First Amended
25 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations and, therefore, denies the allegations therein.

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1 86. In response to the allegations contained in paragraph 86 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 87. In response to the allegations contained in paragraph 87 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 88. In response to the allegations contained in paragraph 88 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 89. In response to the allegations contained in paragraph 89 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 90. In response to the allegations contained in paragraph 90 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 91. In response to the allegations contained in paragraph 91 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 **DECLARATORY RELIEF**

20 92. In response to the allegations contained in paragraph 92 of the First Amended
21 Complaint, Defendant Becerra denies that an actual, substantial, justiciable, and continuing
22 controversy exists between Plaintiff Zeleny and himself. As to the remaining allegations,
23 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations and, therefore, denies the allegations therein.

25 93. In response to the allegations contained in paragraph 93 of the First Amended
26 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
27 conclusions, which do not require admission or denial. To the extent admission or denial is
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1 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations and, therefore, denies the allegations therein.

3 94. In response to the allegations contained in paragraph 94 of the First Amended
4 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
5 conclusions, which do not require admission or denial. To the extent admission or denial is
6 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations and, therefore, denies the allegations therein.

8 95. In response to the allegations contained in paragraph 95 of the First Amended
9 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
10 conclusions, which do not require admission or denial. To the extent admission or denial is
11 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 96. In response to the allegations contained in paragraph 96 of the First Amended
14 Complaint, Defendant Becerra admits the content of California Penal Code sections 25510,
15 26375, and 26400. Defendant Becerra contends that the remainder of the paragraph consists of
16 legal argument and/or conclusions, which do not require admission or denial. To the extent
17 admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

19 97. In response to the allegations contained in paragraph 97 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 98. In response to the allegations contained in paragraph 98 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 **FIRST COUNT**

26 99. In response to the allegations contained in paragraph 99 of the First Amended
27 Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-
28 98 as though set forth fully herein.

100. In response to the allegations contained in paragraph 100 of the First Amended Complaint, Defendant Becerra admits the contents of the First Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendant Becerra contends that the remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial.

101. In response to the allegations contained in paragraph 101 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

102. In response to the allegations contained in paragraph 102 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

103. In response to the allegations contained in paragraph 103 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

104. In response to the allegations contained in paragraph 104 of the First Amended Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

SECOND COUNT

105. In response to the allegations contained in paragraph 105 of the First Amended Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-104 as though set forth fully herein.

106. In response to the allegations contained in paragraph 106 of the First Amended Complaint, Defendant Becerra admits the contents of the First Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendant Becerra contends that the remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial.

1 107. In response to the allegations contained in paragraph 107 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 108. In response to the allegations contained in paragraph 108 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 109. In response to the allegations contained in paragraph 109 of the First Amended
8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations and, therefore, denies the allegations therein.

10 110. In response to the allegations contained in paragraph 110 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 111. In response to the allegations contained in paragraph 111 of the First Amended
14 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
15 conclusions, which do not require admission or denial. To the extent admission or denial is
16 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations and, therefore, denies the allegations therein.

18 **THIRD COUNT**

19 112. In response to the allegations contained in paragraph 112 of the First Amended
20 Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-
21 111 as though set forth fully herein.

22 113. In response to the allegations contained in paragraph 113 of the First Amended
23 Complaint, Defendant Becerra admits the contents of the First and Second Amendments to the
24 United States Constitution and the Due Process Clause of the Fourteenth Amendment to the
25 United States Constitution. Defendant Becerra contends that the remainder of the paragraph
26 consists of legal argument and/or conclusions, which do not require admission or denial.

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1 114. In response to the allegations contained in paragraph 114 of the First Amended
2 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
3 truth of the allegations and, therefore, denies the allegations therein.

4 115. In response to the allegations contained in paragraph 115 of the First Amended
5 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations and, therefore, denies the allegations therein.

7 116. In response to the allegations contained in paragraph 116 of the Complaint,
8 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations and, therefore, denies the allegations therein.

10 117. In response to the allegations contained in paragraph 117 of the First Amended
11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations and, therefore, denies the allegations therein.

13 118. In response to the allegations contained in paragraph 118 of the First Amended
14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations and, therefore, denies the allegations therein.

16 119. In response to the allegations contained in paragraph 119 of the First Amended
17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations and, therefore, denies the allegations therein.

19 120. In response to the allegations contained in paragraph 120 of the First Amended
20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations and, therefore, denies the allegations therein.

22 121. In response to the allegations contained in paragraph 121 of the First Amended
23 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations and, therefore, denies the allegations therein.

25 122. In response to the allegations contained in paragraph 122 of the First Amended
26 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
27 conclusions, which do not require admission or denial. To the extent admission or denial is
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1 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 2 truth of the allegations and, therefore, denies the allegations therein.

3 **FOURTH COUNT**

4 123. In response to the allegations contained in paragraph 123 of the First Amended
 5 Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-
 6 122 as though set forth fully herein.

7 124. In response to the allegations contained in paragraph 124 of the First Amended
 8 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 9 truth of the allegations and, therefore, denies the allegations therein.

10 125. In response to the allegations contained in paragraph 125 of the First Amended
 11 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 12 truth of the allegations and, therefore, denies the allegations therein.

13 126. In response to the allegations contained in paragraph 126 of the First Amended
 14 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 15 truth of the allegations and, therefore, denies the allegations therein.

16 127. In response to the allegations contained in paragraph 127 of the First Amended
 17 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 18 truth of the allegations and, therefore, denies the allegations therein.

19 128. In response to the allegations contained in paragraph 128 of the First Amended
 20 Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 21 truth of the allegations and, therefore, denies the allegations therein.

22 129. In response to the allegations contained in paragraph 129 of the First Amended
 23 Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or
 24 conclusions, which do not require admission or denial. To the extent admission or denial is
 25 required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the
 26 truth of the allegations and, therefore, denies the allegations therein.

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FIFTH COUNT

130. In response to the allegations contained in paragraph 130 of the First Amended Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-129 as though set forth fully herein.

131. In response to the allegations contained in paragraph 131 of the First Amended Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

132. In response to the allegations contained in paragraph 132 of the First Amended Complaint, Defendant Becerra denies that Plaintiff Zeleny has asserted a claim under the California Constitution. Defendant Becerra contends that the remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

133. In response to the allegations contained in paragraph 133 of the First Amended Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. Defendant Becerra denies that Plaintiff Zeleny has asserted a claim under the California Constitution. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

134. In response to the allegations contained in paragraph 134 of the First Amended Complaint, Defendant Becerra denies promulgating policies and/or procedures, conducted under color of state law, that deprived Plaintiff Zeleny of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information

sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

SIXTH COUNT

135. In response to the allegations contained in paragraph 135 of the First Amended Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-134 as though set forth fully herein.

136. In response to the allegations contained in paragraph 136 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

137. In response to the allegations contained in paragraph 137 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

138. In response to the allegations contained in paragraph 138 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

139. In response to the allegations contained in paragraph 139 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

140. In response to the allegations contained in paragraph 140 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

141. In response to the allegations contained in paragraph 141 of the First Amended Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

PRAYER FOR RELIEF

A. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment, “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that California Penal Code §§ 26400 and 26350 are unconstitutional.”

1 B. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,
 2 “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that California Penal Code §§ 25510,
 3 26375, and 26405 do not require municipal approval of ‘authorized participants’ in an
 4 entertainment event or film or video production, and that Zeleny is legally permitted to carry
 5 unloaded firearms in connection with his entertainment events and/or his film or video
 6 productions, without the need for City approval, subject to compliance with other applicable
 7 laws.”

8 C. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,
 9 “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that Zeleny’s peaceful carrying of
 10 unloaded firearms in the course of his speech on matters of public concern or matters of political,
 11 social, or other concerns to the community or issues of significant importance to the public as a
 12 whole, is constitutionally protected; in the alternative, enter a declaratory judgment, pursuant to
 13 28 U.S.C. § 2201, binding on all Defendants, that Zeleny’s peaceful carrying of unloaded
 14 firearms in the course of his entertainment events and/or his film or video productions, is
 15 constitutionally protected.”

16 D. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,
 17 “pursuant to 28 U.S.C. § 2201, binding on the City and Bertini, that Zeleny’s speech activity
 18 concerning the child rape cover-up by the Zhus and their associates is constitutionally protected
 19 and not obscene or ‘obscene as to minors’ within the meaning of the California Penal Code, and
 20 that their public display would not violate Penal Code §§ 311.2, 313.1(a), and 313.4, in virtue of
 21 its serious literary, artistic, political, and social value.”

22 E. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,
 23 “pursuant to 28 U.S.C. § 2201, that the City of Menlo Park’s Special Event Permit requirement is
 24 unconstitutional on its face, or in the alternative, as applied to Zeleny’s protests.”

25 F. Defendant Becerra denies that Plaintiff Zeleny is entitled to an injunction, “against
 26 Defendants prohibiting them from enforcing Penal Code §§ 26400 and 26350 against Zeleny in
 27 connection with his peaceful protests, from enforcing the City of Menlo Park’s Special Event
 28

1 Permit requirement, and from refusing to grant Zeleny required permits based on the content of
2 his speech activity.”

3 G. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,
4 “pursuant to 28 U.S.C. § 2201, construing California Penal Code §§ 25510, 26405, and 26375
5 and enter a declaratory judgment stating that these sections exempt from sanctions under
6 California Penal Code §§ 25400, 26400, and 26350 for the carrying of an unloaded handgun and
7 of an unloaded firearm that is not a handgun, *any individual* who acts and/or holds himself out as
8 an authorized participant in, or serves as an authorized employee or agent of a supplier of
9 firearms for, a motion picture, television or video production, or entertainment event, when the
10 participant lawfully uses that firearm as part of that production or event, as part of rehearsing or
11 practicing for participation in that production or event, or while the participant or authorized
12 employee or agent is at that production or event, or rehearsal or practice for that production or
13 event. Relevant actions and representations include, without limitation, displaying ornamental
14 signs or multimedia artworks; reciting slogans, speeches, or poetry; playing trumpets, accordions,
15 bagpipes, or other musical instruments; and/or wearing conspicuous costumes, makeup, wigs,
16 clown noses, or other decorative prostheses.”

17 H. Defendant Becerra denies that Plaintiff Zeleny is entitled to an award of nominal
18 damages against Defendant NEA and punitive damages in an amount to be proven at trial.

19 I. Defendant Becerra denies that Plaintiff Zeleny is entitled to an award of attorneys
20 fees pursuant to 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5, and costs as
21 provided by law.

22 J. Defendant Becerra denies that Plaintiff Zeleny is entitled to an award of any such
23 other and further relief as the Court deems just and proper.

24 **DEFENSES**

25 **FIRST DEFENSE**

26 Plaintiff Zeleny fails to state a claim for relief against Defendant Becerra.

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SECOND DEFENSE

Plaintiff Zeleny's alleged violation of the Fourteenth Amendment to the United States Constitution (Complaint, ¶¶ 129-133) fails because no case or controversy exists between Plaintiff Zeleny and Defendant Becerra.

THIRD DEFENSE

Plaintiff Zeleny's alleged violation of the Fourteenth Amendment to the United States Constitution (Complaint, ¶¶ 130-134) is barred by the Eleventh Amendment.

FOURTH DEFENSE

To the extent that Plaintiff Zeleny alleges a violation of the California Constitution (Complaint, ¶¶ 132), such claim is barred because a federal court may not grant relief against a state official on the basis of state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

FIFTH DEFENSE

Defendant Becerra has insufficient knowledge on which to form a belief as to whether he may have additional, as yet unstated, defenses available. Defendant Becerra reserves the right to assert additional defenses in the event that discovery indicates such additional defenses are proper.

PRAYER FOR RELIEF

WHEREFORE, Defendant Becerra prays for judgment as follows:

1. Plaintiff Zeleny take nothing from Defendant Becerra by way of this action;
2. Plaintiff Zeleny's First Amended Complaint for Declaratory and Injunctive Relief be dismissed with prejudice, and judgment entered in favor of Defendant Becerra;
3. Defendant Becerra be awarded costs of suit, and any other relief which the Court deems proper.

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1 Dated: April 9, 2019

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 ANTHONY R. HAKL
5 Supervising Deputy Attorney General

6 /s/ Noreen P. Skelly
7 NOREEN P. SKELLY
8 Deputy Attorney General
9 *Attorneys for Defendant Attorney General*
10 *Xavier Becerra*

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CERTIFICATE OF SERVICE

Case Name: **Zeleny, Michael v. Edmund G. Brown, et al.** No. **3:17-cv-07357 RS (NC)**

I hereby certify that on April 9, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S ANSWER TO PLAINTIFF MICHAEL ZELNY'S FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 9, 2019, at Sacramento, California.

Eileen A. Ennis
Declarant

/s/ Eileen A. Ennis
Signature

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